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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,400	01/24/2002	Curtis H. Porter	OPD002CP-1	1607

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EXAMINER

NGUYEN, XUAN LAN T

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/057,400

Examiner

Lan Nguyen

Applicant(s)

PORTER ET AL.

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 18 July 2003.

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) 7, 10 and 15 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-6, 8, 9 and 11-14 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 05 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 10, 11, 14, 15

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A in Paper No. 17 is acknowledged. The traversal is on the ground(s) of undue burden. This is not found persuasive because the election is based on distinct species claimed. In further reviewing of the claims, it is found that claims 10 and 15 are pertaining to Species B, see page 9, lines 21-end for claim 10; page 13, lines 5-9 for claim 15. Hence, claims 7, 10 and 15 have been withdrawn from consideration for pertaining to non-elected species.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. The drawings are objected to because figure 3 shows only one limit switch 30 while figure 4 shows 2 limit switches. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: page 10, line 13, "5" should be --65--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8 and 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 8 recites the limitation "the movement mechanism" in line 1. There is insufficient antecedent basis for this limitation in the claim.
- Claim 9 recites "slots defined in the first plate." Figures 3 and 4 illustrate only one slot in the second plate and two limit switches, respectively. Claim 9 is being treated as --slot defined in the second plate--.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4 and 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bortolon (USP 6,364,047).

Re: claim 1, Bortolon shows an adjustable pedal assembly, as in the present invention, comprising a stationary plate 20, a sliding mounting plate 18 that is movable relative to the stationary plate wherein the sliding mounting plate receives at least one pedal 12, and a drive mechanism 23, 21, 28 for displacing the sliding mounting plate relative to the stationary mounting plate.

Re: claims 4 and 11, figure 3 shows the screw drive 21 and motor 23.

Re: claims 11-14, figure 3 shows a shield (box) next to number 28, said shield is stationary relative to the sliding plate and is displaced with said plate.

8. Claims 3, 6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Bortolon (USP 6,364,047).

Re: claim 3, Bortolon shows an pedal assembly, as in the present invention, comprising a first plate 20 mounted horizontally relative to floor 40, a second plate 18 that is movable relative to the first plate wherein the second plate receives a brake pedal 12 and a foot operated throttle control pedal 14, and means 23, 21, 28 for displacing the second plate relative to the first plate.

Re: claim 6, figure 2 and column 2, lines 3-12, show the foot operated throttle control pedal 14, 15 to be electronic foot operated throttle control pedal.

Re: claim 8, figure 3 shows drive screw 21 and motor 23.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Liston (USP 4,499,963).

Liston shows a pedal assembly, as in the present invention, comprising a first plate 30, a second plate 28 that is movable relative to the first plate wherein the second plate receives a foot operated brake pedal 26, and a movement mechanism 40, 50, 56 for adjusting the position of the second plate relative to the first plate.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liston (USP 4,499,963) in view of Asano et al. (USP 5,086,663).

Liston's pedal assembly, as rejected in claim 2 above, lacks an electronic control mechanism wherein the limits of adjustment are controlled by at least two limit switches. Asano teach the concept of limiting the adjustment of a foot pedal by an electronic control mechanism using at least two limit switches in column 4, lines 60-65. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Liston's pedal assembly with an adjustment limiting capability as taught by Asano using at least two limit switches to ensure that the pedal assembly is properly operated within the desirable adjusting range.

Re: claim 9, Asano does not specify that the limit switches be located within the slot 16a. The slot 16a defines the adjustment range of pedal 18. One of ordinary skill in the art would understand from the passage, "a limit switch may be provided on both sides of the holder to detect the above described lateral movement of the pedal arm 18 to restrict the magnitude of movement thereof.", that the limit switches need to be at both ends of the adjustment range of pedal 18, or the slot 16a, in order to restrict the magnitude of movement of pedal 18. Liston's pedal assembly, as modified by Asano, would have a limit switch at both ends of the slot 38 defined in the second plate 28.

Conclusion

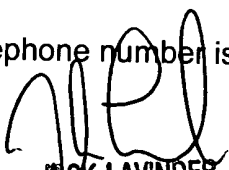
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is 703-308-8347. The examiner can normally be reached on M-F, 8 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



XLN
September 4, 2003



JACK LAVINDER
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